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In the Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF ALABAMA EX REL. CHARLES A. GRADDICK, ATTORNEY GENERAL OF THE STATE OF ALABAMA,
PETITIONER

v.

TENNESSEE VALLEY AUTHORITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE TENNESSEE VALLEY AUTHORITY IN OPPOSITION

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QUESTION PRESENTED

Whether Section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831g(a), requires the Tennessee Valley Authority to move its headquarters from Knoxville, Tennessee, to Muscle Shoals, Alabama.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 42a-74a) is reported at 636 F. 2d 1061. The opinion of the district court (Pet. App. 1a-38a) is reported at 467 F. Supp. 791.

JURISDICTION

The judgment of the court of appeals (Pet. App. 75a-76a) was entered on February 13, 1981. A timely petition for rehearing was denied on April 2, 1981 (Pet. App. 77a-78a). The petition for a writ of certiorari was filed on June 29, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 8(a) of the Tennessee Valley Authority Act of 1933 (TVA Act), 16 U.S.C. 831g(a), provides:

> The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

STATEMENT

1. In 1933, Congress created the Tennessee Valley Authority (TVA). From its inception, the TVA has maintained offices in several locations, including Knoxville, Tennessee; Chattanooga, Tennessee; Muscle Shoals, Alabama; and Washington, D.C. (Pet. App. 43a). Section 8(a) of the TVA Act, 16 U.S.C. 831g(a), provides that TVA "shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama." The TVA has always understood the term "principal office" in the statute to refer to the fixed location where it can be found to be served with legal papers. Thus, from its earliest days the TVA's administrative headquarters has been located in Knoxville, Tennessee (Pet. App. 43a).

Shortly after the creation of TVA, the legality of locating its headquarters in Knoxville was questioned. In 1934, Senator Black of Alabama wrote to the TVA and to President Roosevelt contending that TVA's location of its headquarters in Knoxville violated Section 8(a). The President, utilizing a draft response prepared by TVA at his request, replied on September 6, 1934 (R. 20):[1]

> [I]t seems to me that the Authority has fully complied with the Act. * * * The Authority's area of operations

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[1] "R." references are to the record filed in the court of appeals.

covers parts of seven States, and its activities are designed to benefit the whole nation. It therefore seems to me to be clear that the Congress meant by the provision as to the location of the principal office of the Authority only to fix a legal domicile—not to restrict or localize its business operations in any way.

In 1938, a special Joint Congressional Committee was created by statute to investigate TVA's entire program and operations. 52 Stat. 154. On motion of Senator Bankhead of Alabama (83 Cong. Rec. 4021 (1938)), a provision was included in the legislation specifically directing the committee to investigate whether TVA "has complied with that part of subsection (a) of section 8 of [the TVA] Act * * * which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Alabama." 52 Stat. 155. The Joint Committee, after hearing testimony from Senators Bankhead and Hill and Representative Sparkman of Alabama, as well as TVA witnesses, concluded: "While fully appreciating the contentions advanced by the Alabama Senators, the committee believes that the Board acted legally and within the sphere of its discretion in locating the Authority's administrative offices chiefly in Knoxville and Chattanooga." S. Doc. No. 56, 76th Cong., 1st Sess. 22 (1939).[2]

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[2]The Committee explained (*id.* at 21; footnotes omitted):

> In accordance with the act, the Tennessee Valley Authority Board of Directors, on July 30, 1933, passed a resolution fixing the location of the Authority's principal office at Muscle Shoals. Since that time, an office has in fact been maintained at the Shoals; and copies of the Authority's minutes and a duplicate of its corporate seal have been kept there. The Authority's administrative headquarters, however, including the offices of the Directors and most of the department heads, have been located at Knoxville, Tenn. Another large administrative office has been maintained at Chattanooga.
>
> * * * * *
>
> The term "principal office" has a definite legal meaning, as a fixed location where the corporation may always be served with

Since the passage of the TVA Act, each annual appropriation made by Congress has included funds for the operation of TVA's administrative headquarters, which has continued to be located in Knoxville. In 1976, TVA moved into a new office building complex in Knoxville which houses the TVA Board and more than 3,000 employees. This complex was built to TVA's specifications; it was planned and developed to facilitate TVA management communications with and directions to the various parts of the TVA system; and it is being occupied by TVA under a 20-year lease from October 6, 1976, with an option to renew (R. 311-312, 313, 315).

2. In 1977, petitioner brought this action in the United States District Court for the Northern District of Alabama to compel TVA to relocate its central administration in Muscle Shoals. The district court granted petitioner's motion for summary judgment (Pet. App. 1a-38a) and entered an order (*id.* at 39a-41a) enjoining the TVA from maintaining its headquarters anywhere other than Muscle Shoals.[3]

The court of appeals reversed (Pet. App. 42a-74a). The court of appeals agreed with the district court that petitioner had standing and that its claim was not barred by

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legal papers. It is not synonymous with operating or administrative headquarters, which are often located in an entirely different jurisdiction.

Authority officials assumed from the beginning that the words "principal office" were used in the Tennessee Valley Authority Act in their ordinary legal sense.

Three members of the committee dissented from the committee report and recommended that most of the TVA's functions be transferred to other agencies. *Id.* at 263-350. The minority report expressed the view that the TVA had violated Section 8(a) in locating its headquarters in Knoxville. S. Doc. No. 56, supra, at 330-331.

[3]This order was stayed pending appeal.

Frahn v. *TVA*, 41 F. Supp. 83 (N.D. Ala. 1941), a decision dismissing a suit brought by a group of Alabama residents to compel TVA to move its headquarters (Pet. App. 46a-47a). The court, however, held that the TVA had correctly interpreted Section 8(a) as requiring it only to maintain an office in Muscle Shoals for receipt of service of process. The court concluded that "the ambiguous meaning of the statutory term, general principals [*sic*] of corporate practice, the broad and flexible powers and purposes conferred by the statute, and the echoing silence of Congress in the face of the controversy" required it to ratify the TVA's interpretation (Pet. App. 74a).

ARGUMENT

Petitioner contends (Pet. 27-43) that Section 8(a) of the TVA Act requires the TVA to locate its headquarters in Muscle Shoals, Alabama. The court of appeals correctly rejected this contention in a detailed opinion on which we rely. Moreover, this case presents no legal issue of general importance; indeed, the question presented here is unique to this lawsuit. Accordingly, it does not warrant review by this Court.

As the court of appeals explained (Pet. App. 48a-49a, 53a-57a), the term "principal office" in Section 8(a) is somewhat ambiguous. Sometimes, the term has been treated as referring to corporate headquarters. By the same token, the term has also commonly been used to refer to the place where a corporation may always be found and served with legal process. See, *e.g.*, *Galveston, H. & S.A. Ry.* v. *Gonzales*, 151 U.S. 496, 508 (1894); *Colorado Interstate Gas Co.* v. *FPC*, 142 F. 2d 943, 951 (10th Cir. 1944), aff'd, 324 U.S. 581 (1945); *Dryden* v. *Ranger Refining & Pipe Line Co.*, 280 F. 257, 258-259 (5th Cir.), cert. denied, 260 U.S. 726 (1922); *Watters* v. *Hamilton Gas Co.*, 10 F. Supp. 323, 326 (S.D. W. Va.), aff'd, 79 F. 2d 438 (4th Cir. 1935). See also 1 H. Oleck, *Modern Corporate Law* § 3, at 13

(1958).[4] There is every reason to believe that Congress intended to give the term in Section 8(a) this latter meaning. When the TVA Act was passed in 1933, at least 12 states had statutes that required corporations to maintain in the state a resident agent in charge of a "principal office" for service of process.[5] And the focus of Section 8(a) is on TVA's presence for purposes of suit; after specifying the location of the principal office, the section continues: "The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits."

With respect to an analogous statute, the Attorney General has expressed his view that the term "principal office" does not generally refer to administrative headquarters. The act creating the Federal Savings and Loan Insurance Corporation (FSLIC) provided that its "principal office * * * shall be in the District of Columbia." 48 Stat. 1256. In a formal opinion, the Attorney General approved a proposal to locate FSLIC's administrative headquarters in New York City. 40 Op. Att'y Gen. 115 (1941).

Moreover, consideration of the TVA Act as a whole and its background suggests that the most reasonable interpretation of "principal office" is the one adopted by TVA and approved by the court of appeals relating to presence for service of process. The TVA Act is analogous to the charter

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[4]It is undisputed that TVA has complied with this interpretation of Section 8(a). On July 30, 1933, the TVA Board passed a resolution fixing the location of the Authority's principal office at Muscle Shoals. See S. Doc. No. 56, *supra*, at 21.

[5]See Ala. Code tit. 10, § 70(7) (1941) (derived from 1923 Ala. Acts, at 726); Colo. Comp. Laws § 2243 (1922); Conn. Gen. Stat. § 5160 (rev. 1949) (derived from a 1930 law); 28 Del. Laws 287-288 (1915); Ind. Code Ann. § 4826 (Burns 1929 Supp.); Md. Pub. Gen. Laws Ann. art. 23, § 4 (1924); Nev. Comp. Laws § 1677 (1929); N.J. Rev. Stat. § 14:4-2 (1937); N.M. Stat. Ann. § 32-108 (Comp. 1929); Tenn. Code Ann. § 3761 (1934); Va. Code § 3854 (1930); Wyo. Rev. Stat. § 28-106 (1931).

of a private corporation, which ordinarily specifies a legal "home" for the corporation that need not be its headquarters. Moreover, as noted above, the remainder of Section 8(a) relates to the proper venue for suits against the TVA. It was logical for Congress to specify Muscle Shoals as TVA's statutory location for service of process because the only properties TVA owned at its inception were in the Muscle Shoals area. But requiring TVA to maintain its headquarters at a particular site, even if that site is inconvenient, seems incompatible with other sections of the TVA Act that give the Authority broad discretion to manage its affairs in an efficient manner. See 16 U.S.C. 831b, 831c, 831e and 831dd. See also H.R. Conf. Rep. No. 130, 73d Cong., 1st Sess. 19 (1933) ("We have sought to set up a legislative framework, but not to encase [TVA] in a legislative straightjacket. We intend that the corporation shall have much of the essential freedom and elasticity of a private business corporation.").[6]

The legislative history of the TVA Act does not specifically address Section 8(a) of the Act; however, subsequent events support the view that the Act does not require the TVA to locate its headquarters in Muscle Shoals. From the time of the enactment of the Act, TVA has placed its corporate headquarters elsewhere than in Muscle Shoals. This

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[6]Petitioner relies (Pet. 37-43) on Section 2(e) of the TVA Act, 16 U.S.C. 831a(e), which permits TVA Board members to live in government-owned housing in Muscle Shoals, to support its interpretation. As the court of appeals explained (Pet. App. 63a-66a), however, this language is permissive and does not purport to require the Board members to live in Muscle Shoals (as did the initial House version of the Act). Because a large portion of TVA's initial activity was going to be in the Muscle Shoals area, it made sense for Congress to make available to the Board the then-existing government housing. Thus, the Joint Congressional Committee specifically found that "Congress provided for the possibility that the Authority might locate its administrative headquarters at Muscle Shoals, but refrained from requiring that it do so." S. Doc. No. 56, *supra*, at 22.

contemporaneous construction by the agency of the statute creating it is evidence of the meaning intended by Congress. See, *e.g., Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). And shortly after the enactment of the Act, President Roosevelt, who had signed it, informed Senator Black of his view that the TVA's interpretation was correct. See page 2, *supra*.

Most significantly, Congress has always been aware that the TVA was headquartered in Knoxville, yet it has steadfastly refused to take any action to alter the situation or even to express the view that TVA was violating the Act. In 1935, TVA's construction of Section 8(a) was set forth before the House Military Affairs Committee, including Representative Hill of Alabama, which was conducting hearings on proposed amendments to the TVA Act. *Hearings on Tennessee Valley Authority Before the House Comm. on Military Affairs*, 74th Cong., 1st Sess. 603 (1935). The amendments enacted, however, did not address TVA's interpretation. See 49 Stat. 1075. In 1939, the Joint Congressional Committee stated in its investigative report on the TVA that the Authority had legally exercised its discretion to locate its headquarters in Tennessee. S. Doc. No. 56, *supra*, at 22. In 1944, the Senate Appropriations Committee reported an appropriations bill for TVA that included 16 restrictive amendments offered by Senator McKellar, two of which would have prohibited the use of funds for maintaining TVA's headquarters anywhere other than Muscle Shoals. After these amendments were debated on the Senate floor, the Appropriations Committee ordered them withdrawn. See 90 Cong. Rec. 2671-2673, 2813-2827, 2879-2903, 3037-3057 (1944).

Several years later Congress made clear that it did not consider a move of TVA headquarters to Muscle Shoals to be required by statute. In the early 1950's, the TVA Board of

Directors independently proposed a move of the headquarters to Muscle Shoals.[7] However, objections to the move were raised, and, in response, Congress inserted provisos in TVA's appropriations for fiscal years 1954, 1955, 1956, and 1957 to prevent any such move from taking place. 67 Stat. 190; 68 Stat. 289; 69 Stat. 355; 70 Stat. 474.[8] In short, Congress's failure to disturb TVA's interpretation of Section 8(a) strongly evidences its correctness. See, *e.g.*, *United States* v. *Rutherford*, 442 U.S. 544, 554 n.10 (1979).

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[7]The Board specifically stated that it proposed the move for reasons of efficiency, not because it felt that the move was required by statute. *Hearings on Independent Offices Appropriations for 1954 Before the Subcomm. of the House Comm. on Appropriations*, 83d Cong., 1st Sess. (Pt. 3), 1249-1250, 1276 (1953).

[8]The provisos in the first three statutes prohibited any expenditure of funds by TVA for an administrative office building until such expenditure had been approved by the Director of the Bureau of the Budget. It was common knowledge that bitter relations then existed between TVA and the Bureau, primarily as a result of the so-called Dixon-Yates controversy (see *Mississippi Valley Generating Co.* v. *United States*, 175 F. Supp. 505 (Ct. Cl. 1959), rev'd, 364 U.S. 520 (1961)), and the Director never gave the necessary approval. In the 1957 fiscal year appropriation, a similar proviso was stricken on a point of order, and a proviso directly prohibiting TVA's expenditure of any of the funds appropriated for an administrative office building was substituted. 102 Cong. Rec. 8725 (1956). The provisos in the fiscal year 1954 and 1956 appropriations were included after debate on the House floor during which Alabama Representatives contended, and Representatives from Tennessee and some other states denied, that Section 8(a) of the TVA Act required that TVA's administrative headquarters be at Muscle Shoals. See 99 Cong. Rec. 6658-6660 (1953); 101 Cong. Rec. 8495-8496 (1955).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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